

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION**

THE UNITED STATES for the use)
and benefit of METROPOWER, INC.)
)
Plaintiff)
)
v.) Case No.:
)
UNITED STATES SURETY COMPANY)
AND U.S. SPECIALTY INSURANCE)
COMPANY,)
)
Defendants.)
)

COMPLAINT

COMES NOW, Plaintiff MetroPower, Inc. (“MetroPower”) and files this Complaint against the Defendants United States Surety Company (“US Surety”) and U.S. Specialty Insurance (“US Specialty”) (collectively the “Defendants”).

1.

This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and the provisions of the Miller Act, 40 U.S.C. § 3133(b)(3)(B). The Court has pendent jurisdiction and supplemental jurisdiction over the state law claims alleged in this Complaint pursuant to 28 U.S.C. § 1337.

2.

The Contract at issue was to be performed in Lowndes County, Georgia. Venue, therefore, lies in the United States District Court for the Middle District of Georgia pursuant to 40 U.S.C. § 3133(b)(3)(B) and 28 U.S.C. § 1391(b)(2).

3.

MetroPower is a Georgia corporation with its principal place of business in Albany, Georgia.

4.

US Surety is a Maryland Corporation with a principal office address of One Texas Station Court, Suite 230, Timonium, MD 21093.

5.

US Specialty is a Maryland Corporation with a principal office address of 13403 Northwest Freeway, Houston, TX 77040.

STATEMENT OF FACTS

6.

DTH Corporation (“DTH”) contracted with the Moody Air Force Base-23 Contracting Squadron for a federal project relating to the construction of the Rescue Helicopter Beddown Moody AFB, GA (the “Project”).

7.

As required by the prime contract and the Miller Act, DTH obtained a Miller Act payment bond (the “Bond”) from US Surety and US Specialty (the “Sureties”). Under the terms of the Bond, the Sureties agreed to be bound “joint and severally” with DTH to make payment to all persons having a direct contractual relationship with DTH or to any subcontractor of DTH for furnishing, labor, materials, or both in the prosecution of the work on the Project, in the event DTH failed to make prompt payment to such persons.

8.

DTH and MetroPower executed a subcontract with a date of October 20, 2017 which required MetroPower to furnish labor, materials, and equipment for electrical work on the Project (the “Subcontract”). The Subcontract contains a mandatory arbitration clause, and MetroPower filed a demand for arbitration against DTH on February 9, 2021 with the American Arbitration Association.

9.

MetroPower last furnished labor to the Project on September 22, 2020. MetroPower fully performed its obligations under the Subcontract.

10.

The original and final subcontract price was \$671,935.80. At the direction of DTH, MetroPower performed \$197,854.46 of additional work for a total revised subcontract amount of \$877,516.36.

11.

DTH has only paid MetroPower \$600,935.80 for MetroPower's work under the Subcontract leaving a balance owed of \$276,580.56, exclusive of interest.

Count I

Miller Act Payment Bond

12.

MetroPower repeats and realleges paragraphs 1 through 11 above as though fully set forth in this claim.

13.

The Sureties are obligated, pursuant to the Bond, to pay MetroPower for labor, materials, and services furnished in MetroPower's performance of the work and for which DTH has failed to make payment.

14.

The Sureties have failed to fulfill their obligations under the Bond to pay MetroPower for labor, services, and materials furnished in MetroPower's performance of the work and for which DTH has failed to make payment.

15.

MetroPower is entitled to payment from the Sureties pursuant to the Miller Act, 40 U.S.C. § 3133.

WHEREFORE, MetroPower prays for:

1. Damages in an amount of \$276,580.56 plus interest;
2. Costs of suit incurred herein;
3. Reasonable attorneys' fees; and
4. Such other and further relief as the Court may deem just and proper.

Dated this 19th day of February 2021.

HURST SAWYER & TOLER LLC

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